

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

BETHLEHEM STEEL CORPORATION

Employer-Petitioner

and

Case 5-UC-341

UNITED STEELWORKERS OF AMERICA,  
AFL-CIO, CLC

Union

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Union is a labor organization within the meaning of the Act and is recognized by the Employer as the collective-bargaining representative for certain employees in the unit set forth below.
4. The Employer-Petitioner seeks by its unit clarification petition to exclude three senior credit representatives from its existing contractual bargaining unit of office and technical employees (hereinafter the O&T Unit) at its Sparrows Point, Maryland facility.

## PROCEDURAL HISTORY

In 1985, in case 5-RC-12374, the Board certified the Union as the exclusive bargaining representative of the following unit of office and technical employees (O&T Unit) at the Employer's Sparrows Point facility:

All non-exempt salaried office clerical Employees, non-exempt salaried plant clerical Employees and non-exempt salaried technical Employees employed by the Employer at its Sparrows Point, Maryland, facilities; but excluding all shipyard employees, hourly paid production and maintenance employees, all employees in the General Manager and Industrial Engineering Departments, all programmers, project/program librarians, and key entry operators in the Information Services Department, managerial trainees (including loopers, interim loopers, and technical trainees), confidential employees, professional employees, guards and supervisors as defined in the Act, and all contractor personnel.

On August 29, 1991, the undersigned issued a Decision and Order in Case 5-UC-302 which clarified the O&T Unit specifically to exclude "customer service representatives, telephone operators and administrative assistants." On November 21, 1991, the Board denied the Union's request for review of that Decision.

The parties are signatory to a collective-bargaining agreement, effective by its terms August 1, 1993, through August 1, 1999.

In October 1995, four credit department employees transferred from the Employer's home office in Bethlehem, Pennsylvania to its facility at Sparrows Point, Maryland. The four positions transferred are one credit manager<sup>1</sup> and three senior credit representatives (SCRs). The SCRs were not represented by any labor organization at the Bethlehem office.

The most recent contract negotiations pertaining to the existing O&T unit were conducted during June and July 1993, prior to the transfer of the senior credit representatives to Sparrows Point. During contract reopeners in March 1996, the Union proposed discussion of O&T unit placement issues but the Employer declined to discuss O&T unit issues at that time. It appears the Union did not specifically request bargaining during reopeners on the placement of senior credit representative positions, although Union representative Joe Bartel testified that the Union's proposals at the reopeners were intended to encompass unit placement of senior credit representatives, among others.

In March 1996 and pursuant to Article II, Section 2(e) of the current contract, the Union filed a grievance contending the disputed senior credit representatives should be included within the bargaining unit. Article II, Section 2(e) of the contract reads:

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<sup>1</sup> The parties agree that the credit manager is a statutory supervisor and properly excluded from the unit.

Dispute of Coverage: Any difference which shall arise between the Company and the Union as to whether or not any individual employee is or is not included within the Unit as hereinbefore defined shall be handled as a complaint or grievance in accordance with the procedure set forth in Article XI (which defines the grievance procedure) hereof.

Consistent with the contractual grievance procedure, the parties met, exchanged information and discussed the issue approximately four times. However, they have been unable to reach agreement on unit placement of the disputed employees.

Article V of the collective bargaining agreement references a "Work Element Dictionary", which is a document the parties are to use to describe and classify new or changed jobs that fall within the bargaining unit. Local Union president Wayne Harlow testified that said document came about in the parties' 1986 agreement. The document lists duties of two jobs, "credit approval" and "credit approval, intermediate", which the Union contends are identical to the duties performed by the SCRs. For example, the document states, in part, that a credit approval, intermediate "[d]etermine[s] credit approval qualification by investigation with banks, trade sources and bonding companies ...."

On May 13, 1996 the Employer filed this petition. A hearing was conducted in Case 5-UC-341 on August 22, 1996. On December 26, 1996, the Acting Regional Director issued a Decision and Order dismissing the instant petition as untimely. On September 27, 1999, at 329 NLRB No. 33, the Board reversed the Acting Regional Director's decision. The Board determined that the petition seeks to clarify the unit placement of a "new" classification that did not exist at the Sparrows Point facility at the time the parties executed their contract. Thus, the Board remanded the case to the undersigned for a determination on the merits.

### **POSITIONS OF THE PARTIES**

The Employer contends that the disputed employees cannot constitute an accretion to the unit because the employees share no community of interest with unit employees. The Employer further argues that the disputed employees must be excluded from the unit because they are managerial employees and also because they have been historically excluded from the unit. Finally, the Employer asserts that this issue may not be deferred to the contractual grievance and arbitration procedure as urged by the Union because the Employer has never waived its right to file with the Board a unit clarification petition, the most appropriate mechanism for resolving disputes concerning unit placement of employees.

The Union first argues that this issue should be resolved through the parties' grievance and arbitration procedure as provided by the collective-bargaining agreement. The Union points out that the parties have resolved similar disputes in the past through arbitration and asserts the contract language constitutes a waiver by the Employer of its right to proceed before the Board. On the merits, the Union asserts that the disputed employees are properly included in the unit

and that they are not managerial employees as the Employer claims. Further, the Union contends this is not an issue of unit placement but rather a dispute over whether the work performed by SCRs is unit work. In the alternative, the Union states that the petition should be dismissed as untimely filed, because the parties anticipate changes in the disputed employees' terms and conditions of employment within the near future.

### **SENIOR CREDIT REPRESENTATIVES**

At the time of the hearing, the Employer had three SCRs:<sup>2</sup> Pam Fauri, Don Noblett and Theresa Treiber. The SCRs report directly to the credit manager, Jill Rosenkrantz. The credit manager and SCRs comprise the Employer's credit department, which continues to remain under the authority of credit and financial services manager Doug Yokum at Bethlehem. SCRs are primarily responsible for extending credit to customers and following accounts for collection of outstanding balances. SCRs are assigned to certain sales districts by geography. Rosenkrantz testified that the SCRs' work, described in detail below, has not changed since the relocation.

In general, the credit review process begins when the credit department receives from a sales or customer service representative an order which requires a SCR to evaluate the credit of the customer. The sales or customer service representative normally forwards the credit department the customer's bank and trade references, whom the SCR will contact to determine the customer's relationship with those entities. The SCR may also review a Dun & Bradstreet report on a new customer. The credit department also requests from the customer certain financial information which is reviewed by the SCR. Rosenkrantz testified that sometimes this will require the SCR to review a customer's financial statements. The SCR then evaluates the information gathered and the customer's order itself to determine whether to extend credit to the customer. If credit is granted to the customer, the SCR will also determine the method to be used, e.g. unsecured or secured, cash advance, or letter of credit.

Rosenkrantz testified that a credit transaction is more difficult when the customer is part of the construction industry since most construction companies rely on job funds to flow through a general contractor. SCRs must establish that the Employer is secure under various state laws related to public work. In order to ensure that the Employer gets paid in this type of transaction, SCRs may require a joint check guarantee or a joint purchase order and a payment bond from a reputable bond company.

SCRs spend about half of their time performing credit reviews and making credit decisions and the other half doing follow-up and collection work. With respect to extending credit to customers, SCRs have independent authority to grant a maximum of \$500,000 on initial orders and \$1,000,000 on repeat orders. Anything above those specified limits, SCRs refer to the

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<sup>2</sup> Rosenkrantz testified that there exists a credit representative job classification but that no employees currently occupy that position. Indeed, the job description introduced by the Employer to describe the duties of SCRs is entitled "Credit Representative". Rosenkrantz testified that she believes said document is for SCRs but seemed unclear about the differences between a SCR and credit representative.

credit manager for approval. Rosenkrantz testified that most customers are repeat customers and estimated that they review orders from new customers about twice a week, most of whom seek less than \$500,000 credit. SCRs also consult the credit manager if there is a dispute or a serious problem, such as a customer facing pending bankruptcy. However, Rosenkrantz further testified that, in general, SCRs are fairly independent. Other than the credit limits stated above, SCRs have no set parameters or guidelines to follow when determining whether to extend credit to a customer.

The credit department is located on the first floor of the main office building at Sparrow's Point. Credit manager Rosenkrantz and SCR Fauri each have their own offices while SCRs Noblett and Treiber share an office. Their offices are located in the same hallway of the purchasing department, which is comprised of O&T unit employees. Other unit employees are also housed in the main office building. Unit and non-unit employees located in the main office building share the same cafeteria, parking facility and restrooms.

SCRs are in frequent contact with sales and customer service representatives and sales and marketing management, all of whom are non-unit personnel, regarding the type of order being placed and to inform them if a customer's credit has been approved. SCRs may also contact these personnel, who are located in the same building, to help with collecting payment from a customer or to warn them of a customer's delinquent status. Rosenkrantz testified that although SCRs are in closer proximity with sales, marketing and customer service personnel since the relocation, they still mainly communicate with them by phone. SCRs also may visit customers, if they deem such visit is necessary, to review certain financial information or to push along a difficult negotiation. When dealing directly with a customer, SCRs mainly deal with the vice-president or chief financial officer, or the president in a small company. On occasion, the purchasing department may contact the credit department if they are in need of a Dun & Bradstreet report regarding a potential vendor.

SCRs receive a salary in the range of \$48,000 to \$75,000. SCRs are not compensated for overtime. It appears that SCRs have different health and life insurance plans from the unit employees although they share the same pension fund. If there are any personnel problems involving SCRs, Rosenkrantz testified that she would refer them to Yokum at headquarters.

### **ANALYSIS AND CONCLUSION**

It is well established that "[t]he Board has followed a restrictive policy in finding accretion because it forecloses the employees' basic right to select their bargaining representative." *Towne Ford Sales*, 270 NLRB 311 (1984); see also *Melbet Jewelry Co.*, 180 NLRB 107, 110 (1969). In this regard, accretion is usually found appropriate only in situations where there is a newly created job position or substantial changes in existing job positions such that the employees in those job positions do not possess an identity separate and distinct from employees in the existing unit. *United Parcel Service*, 303 NLRB 326 (1991). Here, there is no evidence of regular contact between the SCRs and unit employees. Further, the traditionally decisive factors of no employee interchange and separate supervision weigh in favor of

clarifying the unit by excluding the SCRs. See *Mac Towing*, 262 NLRB 1331 (1982); *Save-It Discount Foods*, 263 NLRB 689 (1982); *Renzetti's Market*, 238 NLRB 174, 175 (1978).

The Union contends that this case should be deferred to the parties' contractual arbitration procedure since the issue here is not one of unit placement but rather that the work performed by the SCRs is unit work. However, the Board has generally denied to defer representation cases to arbitration. See *Hershey Foods Corp.*, 208 NLRB 452 (1974) and *Commonwealth Gas Co.*, 218 NLRB 857 (1975). Accordingly, I find that the instant petition poses a question of accretion which traditionally has involved the application of statutory policy, not contractual interpretation, and, therefore, deferral is not appropriate here. See *Progressive Service Die Co.*, 323 NLRB 183, 187 (1997); *St. Mary's Medical Center*, 322 NLRB 954 (1997); *Marion Power Shovel*, 230 NLRB 576, 577 (1977).

The Union further contends that the Employer waived its right to file the instant petition based on Article II, Section 2(e) of the parties' contract, described above, and the parties' past practice of resolving similar unit placement disputes by the grievance procedure. However, it is well-established that the Board will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is "explicitly stated." *Metropolitan Edison Co.*, 460 U.S. 693, 112 LRRM 3265, 3271 (1983). Indeed, the waiver must be clear and unmistakable. *Id.* On its face, the contract language relied on by the Union does not explicitly waive the Employer's statutory right to file the instant petition. Moreover, the absence of an explicit reservation by the Employer here of its right to pursue the issue before the Board does not evidence a waiver. *Brookdale Hospital Medical Center*, 313 NLRB 592, fn. 3 (1993), citing *St. Francis Hospital*, 282 NLRB 950 (1987). Further, the fact that the parties have previously used alternative means to resolve unit disputes does not constitute a clear and unmistakable waiver by the Employer of its right to use the Board's processes. See, for example, *Leland Stanford Junior Univ.*, 307 NLRB 75, 81 (1992); *Johnson-Bateman Co.*, 295 NLRB 180, 184 (1989); *Metropolitan Edison Co.*, supra.

Finally, the Union asserts that the instant petition is premature since the Employer filed it only a few months after the SCRs were relocated and, thus, it is possible that the SCRs' terms and conditions of employment may change. However, the record contains insufficient evidence to support the Union's assertion.

Based on the foregoing and the record as a whole, I find that accretion of the SCRs to the present unit is inappropriate here where there is an absence of regular contact, employee interchange and similar supervision. Accordingly, the unit will be clarified to exclude the senior credit representatives from the existing O&T unit. In view of that determination, it is unnecessary to decide whether the SCRs are managerial employees under the Act.

**ORDER**

IT IS HEREBY ORDERED, the Employer-Petitioner's bargaining unit, as set forth in the parties' currently effective collective-bargaining agreement, is clarified to exclude senior credit representatives employed by the Employer at its Sparrows Point, Maryland facilities.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **May 3, 2000**.

Dated April 19, 2000

at Baltimore, Maryland

/s/ LOUIS J. D'AMICO  
Regional Director, Region 5

